

BEFORE THE BOARD OF REAL ESTATE APPRAISERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:)	
)	Case Nos. REA-P3-02A-99-024
DOMENIC J. BARONE,)	REA-S2C-02A-99-028
License No. CRA-136,)	REA-S1-02A-01-012
)	
Respondent.)	STIPULATION AND
)	CONSENT ORDER

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WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Domenic J. Barone (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of real estate appraisers in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.

2. Respondent Domenic J. Barone is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. CRA-136 to practice real estate appraisals in the State of Idaho.

3. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.

4. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices ("USPAP").

5. USPAP Standards require that any appraiser who signs a report prepared by another must accept full responsibility for the appraisal and report.

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6. On or about November 20, 1998, Randall B. Saldin, License No. LRA-313, prepared an appraisal report for the property located at 1809 South Abbs Street in Boise, Idaho ("Subject Property No. 1"). Respondent signed the appraisal as the Supervisory Appraiser.

7. The Board alleges that Respondents' appraisal report of Subject Property No. 1 failed to meet the following requirements of USPAP Standards (1998):

a. The report stated the condition of the interior materials as "average" when, in fact, the condition of the interior materials is "poor," in violation of Standards Rules 1-1(b) and (c) and 2-1(a);

b. The report stated the property has an effective age of 30 years but the property is actually a 1948 home in poor condition, in violation of Standards Rules 1-1(a), (b) and (c) and 2-1(a), (b) and (c);

c. The report failed to disclose that part of the foundation is wood and that part of the roof is metal, in violation of Standards Rules 1-1(b) and (c) and 2-1(a);

d. The report failed to recognize the non-conforming second story addition with a total width of 13 feet, in violation of Standards Rules 1-1(a), (b) and (c) and 2-1(a), (b) and (c);

e. The report failed to discuss that the property's floors are uneven throughout the main floor and that the ceilings are sagging in several places indicating possible structural problems, as well as interior water damage in the living room and at the interior access door to the attached garage, in violation of Standards Rules 1-1(a), (b) and (c) and 2-1(a), (b) and (c);

f. The report included an unfinished, unlighted and unheated storage room as a bedroom, and the report overstated the floor area by inclusion of this storage room, in violation of Standards Rules 1-1(a), (b) and (c) and 2-1(a), (b) and (c);

g. The report concluded that a single bath configuration has no functional obsolescence due to the age of the property, disregarding market interaction and failing to take into account the larger floor area and/or two-story configuration, and failed to recognize the presence of an upper level bedroom without adequate bath access, in violation of Standards Rules 1-1(a), (b) and (c) and 2-1(a), (b) and (c);

h. The report incorporated a cost for “average quality housing,” thereby causing the unit cost per square foot utilized in the cost approach to be overstated for the size and quality of the Subject Property; failed to include any discussion or support for the land value; and used \$14.00 per square foot for the garage with a dirt floor, no overhead door, and metal roof and siding, which is inconsistent with Marshall and Swift, all in violation of Standards Rule 1-4(b)(i);

i. On Comparable No. 1, the report fails to adequately recognize the superior location with regard to significantly higher price range of houses than the Subject Property’s entry-level neighborhood and fails to adequately recognize the superior design, quality and appeal, in violation of Standards Rules 1-1(a), (b) and (c), 1-4(b)(iii), and 2-1(a) and (b);

j. On Comparables Nos. 2, 3 and 4, the report fails to adequately recognize the superior quality and condition, in violation of Standards Rules 1-1(a), (b) and (c), 1-4(b)(iii), and 2-1(a) and (b); and

k. On Comparable No. 5, the report fails to adequately recognize the superior design and quality, in violation of Standards Rules 1-1(a), (b) and (c), 1-4(b)(iii), and 2-1(a) and (b).

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8. On or about September 25, 1998, William D. Votaw, License No. LRA-306, prepared an appraisal report for the property located at 13123 Edison Road in Marsing, Idaho ("Subject Property No. 2"). Respondent signed the appraisal as the Supervisory Appraiser.

9. The Board alleges that Respondents' appraisal report of Subject Property No. 2 failed to meet the following requirements of USPAP Standards (1998):

- a. The report failed to clearly identify exposure time, in violation of Standards Rule 1-2(b);
- b. The report stated the property is located in a subdivision, when it is not, in violation of Standards Rules 1-2(a) and (c), 2-1(c), and 2-2(b)(vii);
- c. The report failed to address that the property was located in a development with distribution ditches and failed to address any special water assessments, water user agreements, water delivery, or the appropriate irrigation district, if any, in violation of Standards Rules 1-2(a) and (c), 2-1(c), and 2-2(b)(vii);
- d. The report failed to identify two large Confined Animal Feeding Operations, one with approximately 4000+ milking cows within one-half mile northwest of the property and the other with approximately 2000+ head and one and one-half miles northwest of the property and that the property is downwind with prevalent winds from the northwest blowing toward the subject property, in violation of Standards Rule 1-4(g);
- e. The report failed to include an adequate analysis and support for the land value, in violation of Standards Rules 1-4(a), 2-1(b) and 2-2(b)(viii);
- f. The report failed to present cost source or calculations in the cost approach, in violation of Standards Rules 1-4(b)(i), 2-1(b), and 2-2(b)(viii);
- g. Adjustments in the sales comparison approach are not supported in the report or Respondent's work file, in violation of Standards Rules 1-4(b)(iii), 2-1(b) and 2-2(b)(viii); and

h. The report failed to include adequate information and support to properly reconcile the quality and quantity of data within the approaches, in violation of Standards Rules 1-5(c), 2-1(a), (b) and (c), and 2-2(b)(viii).

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10. On or about September 29, 1998, William D. Votaw prepared an appraisal report for the property located at 2055 Reba Avenue in Meridian, Idaho ("Subject Property No. 3"). Respondent signed the appraisal as the Supervisory Appraiser.

11. The Board alleges that Respondents' appraisal report of Subject Property No. 3 failed to meet the following requirements of USPAP Standards (1998):

a. The report failed to include an adequate analysis and support for the land value, in violation of Standards Rules 1-4(a), 2-1(b) and 2-2(b)(viii); and

b. The report failed to present cost source or calculations in the cost approach, in violation of Standards Rules 1-4(b)(i), 2-1(b), and 2-2(b)(viii).

12. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of real estate appraisals, specifically Idaho Code § 54-4107(1)(e) and IDAPA 24.18.01.700. Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice real estate appraisals in the State of Idaho.

13. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against his license as set forth in Section C below.

B.

I, Domenic J. Barone, by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in section A. I further understand that these allegations, if proven, would constitute cause for disciplinary action upon my license to practice real estate appraisals in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraisals in the State of Idaho. While I do not admit to the truth of the allegations, I do hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. License No. CRA-136 issued to Respondent Domenic J. Barone is hereby placed on probation for a period of one (1) year from the final execution of this Stipulation.

2. Respondent shall pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00) within thirty (30) days of the entry of the Board's Order.

3. Respondent shall pay investigative costs and attorney fees in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) within thirty (30) days of the entry of the Board's Order.

4. Respondent shall take a 15-unit USPAP course and successfully pass the USPAP examination within sixty (60) days from the date of entry of the Board's Order. Respondent shall submit proof of attendance and proof that he passed any given examinations within 30 days of attendance. Said 15 hours of continuing education shall not count toward Respondent's continuing education requirements.

5. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of real estate appraisals in the State of Idaho.

b. The Board reserves the right to audit Respondent's appraisal files upon request. Any requested audit shall be forwarded to the Bureau of Occupational Licenses, 1109 Main Street, Suite 220, Boise, Idaho 83702, by the last day of the following month.

c. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

d. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

e. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

f. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

6. After the one-year probationary period has passed and upon request, Respondent's license, License No. CRA-136, shall be reinstated without further restriction contingent upon the completion of the requirements of paragraph C 2,3,4 set forth above. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation.

7. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

8. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action against Respondent. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

9. Further, if the Respondent fails to comply with the terms set out above in C.1., C.2., C.3. or C.4., the Respondent's license will be automatically suspended.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default by Respondent.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-4107(1)(d). If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline against Respondent pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337 to 9-350.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

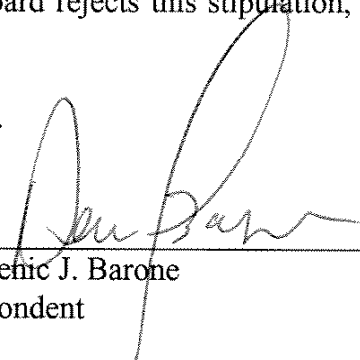
I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for

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settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

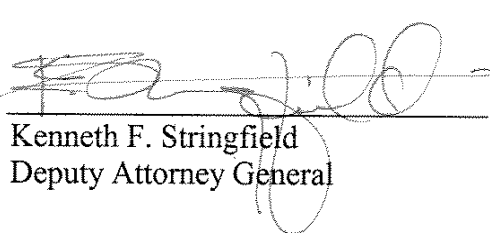
DATED this 21 day of April, 2004.


Domenic J. Barone
Respondent

I concur in this stipulation and order.

DATED this 3rd day of MAY, 2004.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Kenneth F. Stringfield
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 21st day of June, 2004. IT IS SO ORDERED.

IDAHO STATE BOARD
OF REAL ESTATE APPRAISERS

By 
Ruby Stroschein, Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 28th day of June, 2004, I caused to be served a true and correct copy of the foregoing by the following method to:

Domenic J. Barone
C/o David Leroy
P.O. Box 193
Boise, ID 83701

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Kenneth F. Stringfield
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Rayola Jacobsen, Chief
Bureau of Occupational Licenses